



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R03-OAR-2014-0886; FRL- 9929-40-Region-3]

**Approval and Promulgation of Air Quality Implementation Plans;
Pennsylvania; Revision to Allegheny County Regulations for Establishing Permit Fees**

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a State Implementation Plan (SIP) revision submitted by the Commonwealth of Pennsylvania. This revision pertains to the Air Pollution Control portion of the Allegheny County Health Department (ACHD) rules and regulations and consists of changes to the regulations establishing installation permit application and administration fees and open burning permit application fees. EPA is approving these revisions to Pennsylvania's SIP in accordance with the requirements of the Clean Air Act (CAA).

DATES: This final rule is effective on **[insert date 30 days after publication in the Federal Register]**.

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA-R03-OAR-2014-0886. All documents in the docket are listed in the www.regulations.gov website. Although listed in the electronic docket, some information is not publicly available, i.e., confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and

will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through www.regulations.gov or in hard copy for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Pennsylvania Department of Environmental Protection, Bureau of Air Quality Control, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105; Allegheny County Health Department, Bureau of Environmental Quality, Division of Air Quality, 301 39th Street, Pittsburgh, Pennsylvania 15201.

FOR FURTHER INFORMATION CONTACT: Paul T. Wentworth, P.E. at: (215) 814-2183, or by e-mail at wentworth.paul@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

On March 9, 2015 (80 FR 12374), EPA published a document in the Federal Register (NPR) proposing to approve the August 30, 2010 SIP revision submittal from the Commonwealth of Pennsylvania through the Pennsylvania Department of Environmental Protection (PADEP). The SIP revision pertains to the Air Pollution Control portion of ACHD's rules and regulations and consists of changes to the ACHD regulations establishing installation permit application and administration fees and open burning permit application fees. EPA received one comment on the NPR. A summary of the comment and EPA's response are provided in Section III of this document.

II. Summary of SIP Revision

The SIP revision consists of changes to ACHD regulations in Article XXI for installation permit

fees and open burning permit fees, including revisions to section 2102.10, entitled "Installation Permit Application and Administration Fees," and to section 2105.50, entitled "Open Burning and Administration Fees." The changes replace provisions containing fixed monetary amounts for permit fees provided for installation and open burning permits in sections 2102.10 and 2105.50 with language that provides for the Allegheny County Council to establish the amount of the given fee based on consideration of the degree of technical and regulatory difficulty in processing each type of installation permit. The revisions to Article XXI sections 2102.10 and 2105.50 include new permit fee provisions for the following permit types: permits required by the Prevention of Significant Deterioration regulations; permits issued for new major sources and for major modifications to sources locating in or impacting a non-attainment area; permits required by existing standards, such as the New Source Performance Standards and the National Emission Standards for Hazardous Air Pollutants; permits in which ACHD establishes the Maximum Achievable Control Technology for a source; permits for any source requiring an installation permit but not subject to any of the previous requirements; and general installation permits. The specific revisions to requirements in Article XXI sections 2102.10 and 2105.50 pertaining to fees for installation and open burning permits in Allegheny County for proposed approval are explained in the NPR and will not be restated here. *See* 80 FR at 12374.

III. Public Comments and EPA Responses

EPA received one anonymous comment on the proposed approval for the Pennsylvania SIP of revisions to ACHD's regulations. A summary of the comment and our response follows.

Comment: The commenter expresses support for the action proposed by the EPA to include the revised Allegheny County regulations in the Pennsylvania SIP; however, the commenter states that in section III of the NPR, EPA's statement that section 110(a)(2)(L)(i) and (ii) requires SIPs to include fees sufficient to cover the costs of reviewing and acting upon a permit application is incorrect. The commenter points out that CAA section 110(a)(2)(L)(i) and (ii) do not require SIPs to "include" fees; rather 110(a)(2)(L) states SIPs must require owners and operators to "pay" fees. According to the commenter, if the statement EPA made was correct, it would mean that the revisions EPA is acting upon do not satisfy the requirements of section 110(a)(2)(L)(i) and (ii) because the proposed revisions remove the fixed monetary fee for certain permits and therefore the SIP would not include a fee and thus would not meet section 110(a)(2)(L)(i) and (ii). To further support the argument, the commenter cites the September 13, 2013 Memorandum from Stephen D. Page, Director, Office of Air Quality Planning and Standards, *Guidance on Infrastructure State Implementation Plan Elements Under CAA Sections 110(a)(1) and 110(a)(2)* (Infrastructure SIP Guidance), in which EPA discusses section 110(a)(2)(L) and states that "the fee program is not required to be part of the EPA approved SIP."

Response: EPA appreciates the commenter's support for the action approving this SIP revision. EPA also agrees with the commenter that fee programs included in SIPs to comply with section 110(a)(2)(L) do not have to require a specific dollar amount for a permit or other approval. The Agency also agrees that the ACHD fee program provisions that we approve into the SIP today are consistent with CAA section 110(a)(2)(L). We do not agree with the commenter's characterization of the Agency's interpretation of the statute as explained below.

CAA section 110(a)(2)(L) regarding permit fee requirements for SIPs provides in pertinent part that the SIP shall “require the owner and operator of each major stationary source to pay the permitting authority, as a condition of any permit required under this chapter, a fee sufficient to cover” the reasonable costs of reviewing and acting on permit applications and the reasonable costs of implementing and enforcing the terms and conditions of any such permits. Section 110(a)(2)(L) further requires such provisions for SIPs until the major source fee requirements are superseded with respect to such sources by EPA’s approval of a fee program under Title V of the CAA.¹

In the NPR, EPA proposed to approve for the Pennsylvania SIP certain revisions to Allegheny County’s regulations which deleted fixed fees for certain required installation permits and open burning permits from the ACHD regulations and replaced such fixed fees with provisions stating that installation and open burning permit fees required for owners and operators of certain pollutant emitting stationary sources would be set by Allegheny County factoring in the degree of technical and regulatory difficulty for categories of installation permits. EPA proposed to approve the revisions as meeting requirements for permit fees in CAA section 110(a)(2)(L). In the proposal, EPA inadvertently did not include the verbatim text of CAA section 110(a)(2)(L) in providing the explanation for our proposed approval of Allegheny County’s regulations. However, the revisions to sections 2102.10 and 2105.50 of Article XXI of Allegheny County’s regulations satisfy CAA section 110(a)(2)(L) because the revised provisions in sections 2102.10 and 2105.50 clearly require the owner and operator of certain air pollutant-

¹ EPA’s Infrastructure SIP Guidance states that the EPA-approved title V fee program is not *required* to be included in the SIP and then refers state air agencies to EPA regional offices to address section 110(a)(2)(L) requirements for permit fee programs addressing permits required by Title I of the CAA, such as permits required upon construction or modification of certain sources.

emitting sources to pay to Allegheny County, the local permitting authority, a fee sufficient to cover reasonable costs to review and act upon permit applications and reasonable costs for Allegheny County to implement and enforce permit terms and conditions. The revisions to sections 2102.10 and 2105.50 simply remove a fixed monetary fee that owners and operators of certain sources would need to pay for installation and open burning permits and replace the fixed fee with applicable criteria for Allegheny County to determine the value of the fee for owners or operators to obtain required installation and open burning permits. The provisions of Allegheny County's regulations still require the payment of a fee for certain installation and open burning permits which would meet requirements in section 110(a)(2)(L) for SIPs to include provisions for payment of such fees.

EPA is unsure of the relevance of the quote from EPA's Infrastructure SIP Guidance included in the comment. The Infrastructure SIP Guidance at pages 56-57 states: "Currently, every state has an EPA-approved fee program under CAA Title V. However, the fee program is not required to be part of the EPA approved SIP." This language clearly refers to the EPA-approved fee program under CAA Title V for *operating* permits required by Title V of the CAA which *may* supersede certain requirements for SIPs to include fee requirements for permits required by the CAA. Pennsylvania has an EPA-approved Title V program and an EPA-approved Title V fee program, but the Allegheny County regulations we proposed to approve in the NPR are not part of the Pennsylvania Title V program. Sections 2102.10 and 2105.50 of Article XXI of Allegheny County's regulations relate to fees for certain installation and open burning permits which are required by Allegheny County prior to installation of certain pollutant emitting sources or open burning operations. Such permits are required by Allegheny County to implement

requirements in Title I of the CAA, not Title V. These fees provide funds for Allegheny County to review, implement and enforce permits required by Title I of the CAA that are not funded under the state's Title V permit program. Thus, the language of the Infrastructure SIP Guidance included in the comment is not applicable to this action. EPA proposed in the NPR to approve the revisions to sections 2102.10 and 2105.50 of Article XXI because the regulations require owners or operators of certain stationary sources to pay permit fees as a precondition to receiving an installation or open burning permit. These regulations therefore satisfy requirements in section 110(a)(2)(L) that the SIP require owners and operators to pay the permitting authority a fee sufficient to cover reasonable costs of reviewing, acting on, implementing and enforcing permits required by the CAA, including installation or construction permits required by Title I of the CAA.

IV. Final Action

EPA is approving as a revision to the Pennsylvania SIP the August 30, 2010 SIP submittal from PADEP consisting of changes to the ACHD regulations establishing installation permit application and administration fee requirements and open burning permit application fee requirements in Allegheny County.

V. Incorporation by Reference

In this, the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is finalizing the incorporation by reference of the Allegheny County Regulations described in the amendments to 40 CFR part 52 set forth below. The EPA has made, and will continue to make, these documents generally available electronically through www.regulations.gov and/or in hard copy at the appropriate EPA

office (see the ADDRESSES section of this preamble for more information).

VI. Statutory and Executive Order Reviews

A. General Requirements

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- is not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

B. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. A major rule cannot take effect until 60 days after it is published in the Federal Register. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

C. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[Insert date 60 days after date of publication in the Federal Register]**. Filing a petition for reconsideration by the

Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action pertaining to the Air Pollution Control portion of the Allegheny County Rules and Regulations, which revises the regulations establishing installation permit application and administration fees, as well as open burning permit application fees may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds

Dated: June 11, 2015.

William C. Early,
Acting Regional Administrator,
Region III.

40 CFR part 52 is amended as follows:

PART 52 – APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 et seq.

Subpart NN--Pennsylvania

2. In § 52.2020, the table in paragraph (c)(2) is amended by:

- a. Under Part B, revising the entry for “2102.10”; and
- b. Under Part E, subpart 5, revising the entry for “2105.50”.

The revisions read as follows:

§ 52.2020 Identification of plan.

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(c) * * *

(2) ***

Article XX or XXI citation	Title/subject	State effective date	EPA approval date	Additional explanation/ §52.2063 citation
* * * * *				
Part B-Permits Generally				
* * * * *				
2102.10	Installation Permit Application And Administration Fees	7/26/2009	[Insert date of publication in the Federal Register [Insert Federal Register citation]	
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Part E-Source Emission and Operating Standards				
* * * * *				
Subpart 5-Open Burning and Abrasive Blasting Sources				
2105.50 (except paragraph .50.d)	Open Burning	7/26/2009	[Insert date of publication in the Federal Register [Insert Federal Register citation]	
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[FR Doc. 2015-15458 Filed: 6/23/2015 08:45 am; Publication Date: 6/24/2015]